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Attorneys for Defendant United Parcel Service, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MICHAEL RYAN,

Plaintiff,

v.

**UNITED PARCEL SERVICE,
INC.,**

Defendant.

Case No.: _____

**DEFENDANT'S NOTICE OF
REMOVAL**

Defendant United Parcel Service, Inc. ("UPS"), by and through its undersigned counsel, respectfully submits this Notice of Removal to remove this action to this Court from the Montana Fourth Judicial District, Missoula County. Removal jurisdiction exists pursuant to 28 U.S.C. § 1332 on the basis of diversity of citizenship and amount in controversy.

STATE COURT ACTION

1. On or about March 3, 2021, Plaintiff Michael Ryan (“Ryan”) filed his Complaint in the Montana Fourth Judicial District Court, Missoula County, entitled *Michael Ryan v. United Parcel Service, Inc.*, Case No. DV 32-2021-0000200-WS. See Exhibit A, a true and correct copy of the Complaint (hereinafter, “Complaint” or “Compl.”).

2. Ryan’s counsel mailed a copy of the Complaint and Notice of Lawsuit and Request to Acknowledge and Waive Service of Summons to UPS’s registered agent in the State of Montana. See Exhibit B, a true and correct copy of the Notice.

3. Pursuant to 28 U.S.C. § 1446(a), these documents comprise all of the “process, pleadings, and orders” filed in the state court action.

4. Pursuant to 28 U.S.C. § 1446(b), UPS’s Notice of Removal was filed within thirty (30) days of UPS’s May 17, 2021 acknowledgement of receipt of the Complaint. See Exhibit C.

DIVERSITY JURISDICTION

5. This Court has jurisdiction over this case because the parties are of completely diverse citizenship.

6. Citizenship of a natural person is established by domicile. See *Kantor v. Wellesley Galleris, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983) (“To show state citizenship for diversity purposes under federal common law a party must (1) be a

citizen of the United States, and (2) be domiciled in the state.”); *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986) (“[C]ourts have held that the determination of an individual’s domicile involves a number of factors (no single factor controlling), including: current residence, voting registration and voting practices, location of personal and real property, location of brokerage and bank accounts, location of spouse and family, membership in unions and other organizations, place of employment or business, driver’s license and automobile registration, and payment of taxes.”).

7. In his Complaint, Ryan alleges that he is a resident of Missoula County, Montana. *See* Compl., ¶ 1. Accordingly, Ryan is a citizen of the State of Montana.

8. As alleged in the Complaint, UPS is a corporation that is incorporated under the laws of Ohio. Compl., ¶ 2. Additionally, as alleged in the Complaint, UPS’s principal place of business is located in Atlanta, Georgia. Compl., ¶ 2. Therefore, UPS is a citizen of the states of Ohio and Georgia. 28 U.S.C. § 1332(c)(1).

9. Accordingly, pursuant to 28 U.S.C. § 1332(a)(1), both parties are citizens of different states.

10. Ryan seeks “lost wages and lost fringe benefits, in an amount to be determined at trial.” Compl., ¶ 13. He also seeks “Plaintiff’s actual, general and special damages.” Compl., Prayer for Relief, ¶ A.

11. Under the Montana Wrongful Discharge from Employment Act (“WDEA”), an employee who has been wrongfully discharged may be awarded lost wages and fringe benefits for a period not to exceed four years from the date of discharge, together with interest on the lost wages and fringe benefits. Mont. Code Ann. § 39-2-905. Ryan contends that that at the time of his termination from employment with UPS, he was earning \$19.61 per hour. Assuming a regular workweek of 40 hours per week and 50 workweeks per year, Ryan’s annual compensation totaled approximately \$39,220.

12. Consequently, an amount equal to four times Ryan’s annual compensation far exceeds the jurisdictional minimum amount of \$75,000.00 (total of \$156,880.00).

13. Therefore, the amount in controversy exceeds the jurisdictional minimum of \$75,000.00, exclusive of interest and costs, within the meaning of 28 U.S.C. § 1332(a).

14. Accordingly, this lawsuit is one that may be removed to this Court by UPS pursuant to 28 U.S.C. §§ 1441 and 1446, because this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a).

VENUE

15. Pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) and Local Rules 1.2(c)(5) and 3.2(b), a civil action pending in the Montana Fourth Judicial District, Missoula

County, is properly removed to the United States District Court for the District of Montana, Missoula Division.

STATE COURT NOTIFIED

16. In accordance with 28 U.S.C. § 1446(d), copies of the original Notice of Removal were served on Ryan's counsel and filed with the Montana Fourth Judicial District, Missoula County.

CONCLUSION

WHEREFORE, UPS respectfully removes this action from the Montana Fourth Judicial District, Missoula County, to this Court for further proceedings.

Dated June 7, 2021

By: Michelle L. Gomez
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2021, I filed the foregoing Notice of Removal using the Court's CM/ECF filing system, which will serve the following parties:

Torrance L. Coburn
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P.O. Box 3778
Missoula, MT 59806-3778

s/ Patricia Perez

Patricia Perez

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